IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

United India Insurance Company Limited

Versus

Smt.Shilpa & others

S.B.CIVIL MISC. APPEAL NO.116/1993

Against the award dated 30.01.1993 made by the Motor Accidents Claims Tribunal, Balotra in Claim Case No.1/1990.

Date of Judgment : 16th March 2007

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.R.K.Mehta for the appellant

Mr.Rajesh Panwar) for the respondents
Mr.N.S.Rajpurohit)

Reportable **BY THE COURT:**

This appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act of 1988'/'the new Act') has been preferred by the insurer of the vehicle involved in accident against the award dated 30.01.1993 made by the Motor Accidents Claims Tribunal, Balotra in Claim Case No.1/1990 essentially contending on its limited liability; and also questioning the quantum of compensation awarded by the Tribunal, in the sum

of Rs.5,25,000/-, to the wife and parents of 22 years' old accident victim Sanjay Kumar alias Khem Chand.

Brief facts relevant for determination of the questions involved in this appeal are that on 24.07.1989 at about 4.30 p.m., the victim Sanjay Kumar with his wife Smt. Shilpa (claimant No.1), his friend Mahendra Kumar, and friend's wife Smt. Rekha while travelling in a Maruti car bearing registration No. RJW 7281 and returning back from their pilgrimage to Nakoda met with the accident near Parasdham on Balotra-Nakoda route for head-on collision of the car and a Jonga van bearing registration No. RJC 5129, driven by the non-applicant No.1 Sabir Khan, belonging to the non-applicant No.2 Mohammed Salim, and insured with the non-applicant No.3 United India Insurance Company Limited (appellant). As a result of the accident, the occupants of Maruti car and so also the occupants of Jonga van sustained varying injuries; and Sanjay Kumar succumbed on the way to hospital.

Narrating the incident aforesaid and attributing it to rash and negligent driving of Jonga, the wife and parents of the victim Sanjay Kumar made the claim for compensation and for quantification pointed out that deceased was a healthy person in 22 years of age and had married to the claimant No.1 on 12.07.1989, just 12 days before the accident; that he was serving with M/s. Poonamchand M. Shah at Hubli earning

Rs.8,500/- per annum in salary; that he was further earning Rs.15,000/- per annum from his own business; that the deceased had the potential to establish himself as a businessman and an industrialist; that he had purchased a shop in the main market at Surat and was to start his independent cloths business but all the dreams were shattered with this accident; that the deceased was contributing Rs.20,000/- per annum to the family from out of the present income and was likely to contribute about Rs.40,000/- in future. It was also averred that in the accident the claimant No.1 Shilpa sustained grievous injuries on her person, she was treated at several places, and was still under treatment; that she has been under trauma, pain and sufferings and substantial expenditure has already been incurred on her treatment. The claimants submitted that due to sudden demise of Sanjay Kumar, his parents have suffered shock and unbearable agony and the entire future of the claimant No.1 darkened with her being widowed just 12 days after her marriage. The claimants sought compensation, in all in the sum of Rs.36,70,000/-.

Claim for compensation was put to contention by the non-applicants Nos.1 and 2 on the submissions, inter alia, that the accident did not occur for any negligence on the part of Jonga driver and liability for compensation, if any, was that of

the Insurance Company.

The appellant Insurance Company in its separate reply, while stating general denial of the claim averments, submitted that under the insurance policy of the vehicle in question, its liability was limited upto Rs.50,000/- only; and stated several other grounds for its exoneration including violation of policy conditions.

Following issues were framed by the Tribunal for determination of the questions involved in the case:-

> "1- आया दिनांक 24/7/89 को अप्रार्थी साबिर खां ने जोंगा आर०जे०सी० 5129 तेजी व लापरवाही से चलाकर पारसधाम के पास मारूती कार के टक्कर मारी जिससे प्रार्थीनी के पति संजयकुमार की चोटों के फलस्वरूप मृत्यु कारित हुई ?
>
> 2- आया प्रार्थीनी 36,70,000 रूपये हर्जाना पाने की अधिकारीणी है ?
>
> 3- आया जोंगा आर०जे०सी० 5129 अप्रार्थी सं० 5 के यहां बीमीत था ?
>
> 4- आया बीमा कम्पनी का दायित्व 50,000 तक सीमीत हैं ?
>
> 5- अनुतोष ।"

In claimants' evidence, the Investigating Officer, Gumana Ram, Head Constable, Police Station Balotra was examined as AW-1; the occupants of Jonga van, Bhikhe Khan, Gemar Singh and Subhan Khan were examined as AW-2, AW-3 and AW-4 respectively; the Medical Jurist who conducted post mortem, Dr. G.C.Vadera was examined as

AW-5; Maruti car driver Vijay Kumar was examined as AW-6 and father of the victim, claimant No.2 Poonamchand, was examined as AW-7. No evidence whatsoever was led by any of the non-applicants.

After hearing the parties and examining the record, learned Judge of the Tribunal proceeded to decide the issues involved in the case by the impugned award dated 30.01.1993.

In issue No.1 relating to the question of responsibility towards the accident resulting in death of Sanjay Kumar, the learned Judge noticed the statement of AW-2 Bhikhe Khan that he was travelling in the Jonga jeep on 24.07.1989 from Balotra to Nakoda; that near Parasdham at about 4.30 p.m., the jeep driven rashly and negligently by Sabir hit the oncoming Maruti car; that the car driver sustained injuries and fell unconscious; that two other occupants of the car also sustained injuries and Sanjay Kumar died in the hospital; that the accident occurred only for the fault of Jonga jeep and there was no mistake on the part of Maruti car; and that the Jonga jeep driver was asked to drive the vehicle slowly but he did not care. The learned Judge also referred to the statement of AW-3 Gemar Singh, another passenger of the Jonga jeep that he was going in the said vehicle RJC 5129 to Nakoda after making payment of fare of Rs.3/-; that the said vehicle

was being plied between Balotra and Nakoda for quite some time transporting passengers on fare; that the accident was caused by speed driving of Jonga by Sabir; that the occupants of Jonga, Bhikhe Khan and Chimna sustained injuries; and that the occupants of car too sustained injuries and one of them died. The learned Judge further referred to the statement of AW-4 Subhan Khan who too supported the statements of Bhikhe Khan and Gemar Singh to the effect that Sabir was driving the vehicle rashly and negligently. The learned Judge also referred to the statement of AW-6 Vijay Kumar, driver of Maruti car that the aforesaid two couples were travelling in the car; and that the accident occurred for the oncoming Jonga vehicle hitting the car despite all his efforts to avoid. The learned Judge further referred to the statement of the Investigating Officer, Gumana Ram AW-1 and so also to the site plan Ex.28 and the site inspection memo Ex.29 showing that the accident occurred in the middle of about 18 ft. wide road and the Jonga vehicle was found lying at a distance of about 138 ft. from the point of incident on its right hand side with both its rear wheel tyres punctured. In the totality of circumstances, the learned Judge came to the conclusion that the accident was caused by rash and negligent driving of Jonga; and found further with reference to the statement of AW-5 Dr. G.C.Vadera, post mortem report

Ex.9, and injury report Ex.10 that Sanjay Kumar died because of the injuries sustained in the accident and Smt. Shilpa sustained seven injuries, mostly on her forehead and face, and she was unconscious at the time of examination.

The learned Judge took up quantification of compensation in issue No.2 and referred to the statement of AW-7 Poonamchand that Sanjay Kumar was married on 12.07.1989, was earlier studying in the school with his name as Khem Chand and was later on working on his shop and also carrying on agency business; that the deceased was getting salary of Rs.8,500/- per annum from his shop and was earning Rs.15,000/- per annum in commission; that Sanjay had purchased a shop at Surat to start his own business; that Shilpa was shattered for having been widowed within 12 days of her marriage, was not in a position to make any deposition, was being treated for her traumatic condition, and substantial amount has already been spent on her treatment. The learned Judge also referred to his cross-examination where he denied the suggestion if Khem Chand was a different person and asserted that Sanjay had been working 3-4 years before his marriage; that he was not aware about the details of commission income of Sanjay Kumar; that there were credits in the name of Sanjay Kumar to the tune of about Rs.4-5 lacs and that included the credits in the name of Shilpa also; and

that it was wrong to suggest that Shilpa has contracted second marriage.

After referring to the age and earnings of victim and tax returns showing his income at Rs.67,637/- for the assessment year 1988-1989 (Ex.26) and Rs.1,31,167/- for the assessment year 1989-1990 (Ex.27), the learned Judge observed that Sanjay Kumar was working on his father's shop but such credits were the arrangements made by rich persons in order to save income tax by showing deposits in the name of minor son whose income was earlier considered separately; and that the alleged deposits were nevertheless available and were yielding income in the form of interest and commission. Then, the learned Judge observed that the fact that Sanjay Kumar died within 12 days of his marriage cannot be overlooked and even under Section 125 Cr.P.C., maintenance at the rate of Rs.500/- per month was allowed by the Parliament and, therefore, it would be proper to allow maintenance to Smt. Shilpa, claimant No.1 at Rs.6,000/- per annum; and calculated this amount for 43 years to the tune of Rs.2,58,000/-. The learned Judge considered it appropriate to allow Smt. Shilpa a further sum of Rs.17,000/- towards the loss suffered by her due to the injuries sustained in accident. The learned Judge observed that parents of the victim Sanjay were moneyed persons having business concern in the name

of Poonamchand M. Shah and they were not entitled to receive any amount towards pecuniary loss. However, the learned Judge allowed Rs.50,000/- each to the mother and father of the victim for mental agony and so also Rs.50,000/- to Smt. Shilpa on this count. The learned Judge allowed another Rs.1,00,000/- to Smt. Shilpa for her being widowed within 12 days of marriage and for her likely to suffer widowhood for whole of the life. In this manner, the learned Judge assessed total loss for the claimants at Rs.5,25,000/-.

Issue No.3 related to the question if the vehicle bearing registration No.RJC 5129 was insured with the non-applicant No.5 and, with reference to the cover note Ex.37, the learned Judge decided this issue in favour of the claimants. Issue No.4 was framed on the question if the liability of the insurer was limited upto Rs.50,000/- and the learned Judge observed that Sanjay Kumar and Shilpa were the occupants of Maruti car and mistake has been found in the Jonga vehicle and present one was a matter under the new Motor Vehicles Act, therefore, liability of the Insurance Company was unlimited; and not limited to Rs.50,000/- only. The entire consideration in issue No.4 reads thus:

> "चूँकि दुर्घटना में मृत्यु संजयकुमार की हुई है जो मारूति गाड़ी में सवार था और श्रीमती शिल्पा भी मारूति गाड़ी में बैठी थी। गलती जोंगा वाले की बताई गई है और चूँकि यह नये मोटरवाहन अधिनियम के तहत मामला है अत: बीमा कम्पनी का दायित्व असीमित है रूपये 50,000/- तक ही

सीमित नहीं है। अत: वाद बिन्दु प्रार्थीगण के पक्ष में तय किया जाता है।"

As a result of the discussion aforesaid, the Tribunal proceeded to make an award in the sum of Rs.5,25,000/- in favour of the claimants against the driver, owner and insurer of Jonga van and allowed interest at the rate of 10% per annum from the date of filing of claim application.

Though the instant appeal preferred by the insurer of the said Jonga van was admitted on 07.05.1993 but on the same date, the stay application filed by the appellant was rejected; and the record shows that thereafter, the entire amount payable under the award in question was deposited by the insurer with the Tribunal and the same has been disbursed to the claimants, after taking a solvent security. A sum of Rs.67,250/- each has been disbursed to the parents of the deceased, comprising of Rs.50,000/- in principal and interest thereupon; and the remaining amount has been disbursed to the wife of the deceased.

Assailing the award, learned counsel for the insurer Mr. R.K.Mehta has strenuously contended that the accident in question occurred on 24.07.1989 whereas the Motor Vehicles Act, 1988 came into force on 01.07.1989; that the policy of insurance coverage was of course issued by the appellant-

insurer but with limited liability, and the same was in force immediately before commencement of the Act of 1988; and in view of the proviso to sub-section (2) of Section 147 of the Act of 1988, the policy continued to remain effective for a period of four months after such commencement, the date of commencement of the insurance policy being 08.05.1989. Learned counsel contended that in view of the said policy; and for the vehicle in question being the one in which passengers were carried for hire or reward, in respect of third parties statutory liability was limited to Rs.50,000/- under the Motor Vehicles Act, 1939 ('the Act of 1939'/'the old Act') and no other liability having been undertaken, the Tribunal has been in error in mulcting entire liability upon the insurer-appellant. Learned counsel strongly relied upon a decision of the Hon'ble Supreme Court in the case of National Insurance Company Vs. Puja Roller Flour Mills (P) Ltd.: MACD 2006 (2) (SC) 721 and submitted that with the latest pronouncement by the Hon'ble Supreme Court, the question is now settled that when the accident took place within four months of commencement of the new Act and the policy was otherwise to expire thereafter, according to the proviso to Section 147(2) of the new Act, the policy issued under the old Act shall continue to be effective and thereby, liability of the appellant would remain limited to Rs.50,000/- as provided in respect of

the category of vehicle as that of the present case. Learned counsel further assailed the quantum of compensation with the submissions that the Tribunal has erred in making an excessive determination of the amount of pecuniary loss with application of multiplier of 43 and in failing to consider that larger part of the income of the deceased was from interest and commission that was still available to the claimants. Learned counsel submitted that an amount of Rs.1,00,000/- towards loss of consortium and another Rs.1,50,000/- towards mental agony stand too much in excess of reasonable amount towards non-pecuniary loss and even the amount of Rs.17,000/- towards treatment expenditure of Smt. Shilpa is on the higher side. Learned counsel submitted that on the whole, the amount of award at Rs.5,25,000/- could only be said to be exorbitant and deserves modification by downward revision.

Per contra, learned counsel Mr.Rajesh Panwar appearing for the vehicle owner submitted that the case of the present nature, with reference to the category of the vehicle involved, shall be covered by clause (c) and not clauses (a) or (b) of Section 95(2) of the Act of 1939. According to learned counsel, clause (a) of sub-section (2) of Section 95 concerning a goods vehicle relates to insurance of any class of persons including liability arising under the Workmen's

Compensation Act in respect of the employees not exceeding six in number, other than driver, being carried in the vehicle; whereas clause (b) thereof relates to the passengers-carrying vehicle; that the Jonga jeep in question, being not the vehicle as covered under clauses (a) or (b), the question of limit of liability does not arise because under clause (c) in respect of the vehicles of any other class, statutory limit has been upto the extent of the liability incurred and not lesser. Learned counsel further submitted that sub-clause (i) of clause (b) of sub-section (2) of Section 95 deals with passengers other than those passengers who are carried for hire or reward for whom a limit of liability at Rs.50,000/- has been provided but not in respect of such person like the occupant of another vehicle who is essentially a third party in relation to the vehicle whose insurance coverage is in question. Learned counsel for the respondent referred to a decision of the Hon'ble Supreme Court in Jameskutty Jacob Vs. United India Insurance Co. Ltd. and others: 2003 ACJ 1790 to support his submissions that when there was no evidence to the effect that the vehicle was a taxi, carrying passengers for hire or reward, liability of insurer would be as under Section 95(2)(c) of the Act for the liability incurred and not a limited one. Learned counsel further submitted that the submissions sought to be made by the insurer deserve to be rejected for another reason that

they have failed to lead any evidence and have not produced even the insurance policy and have not explained charging of premium of Rs.180/-; and merely with reference to cover note Ex.37 it cannot be concluded that liability of the insurer was limited.

In the second limb of submissions, learned counsel referred to clause (c) of sub-section (2) of Section 217 of the Act of 1988 and submitted that sub-section (2) of Section 147 of the new Act cannot be read as a proviso to Section 217 (2) (c) of the new Act and the contention about limited liability of the Insurance Company to the extent of the amount mentioned in Section 95(2) of the old Act cannot be countenanced. Learned counsel referred to a decision of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Behari Lal and others: 2000 ACJ 1428 and submitted that the law has been laid down in no uncertain terms by the elaborate decision of the Hon'ble Supreme Court that even in respect of policy issued under the old Act, after commencement of the new Act, the insurance coverage would be as required under the later. Learned counsel further referred to a decision of Hon'ble Supreme Court in Padma Srinivasan Vs. Premier Insurance Company Ltd.: 1982 ACJ 191 to submit that for determination of the extent of liability of Insurance Company, the material date is the date of accrual of

cause of action when its liability arises i.e., the date of accident. Learned counsel submitted that the decision relied upon by the learned counsel for the insurer cannot be a binding precedent for the reason that the decision in Padma Srinivasan (supra) laying down basic principle about material date for the purpose of determination of liability is of a Bench of three Hon'ble Judges of the Supreme Court, whereas the decision in Puja Roller Flour Mills (P) Ltd. (supra) is of a Bench of two Hon'ble Judges; and secondly, according to the learned counsel, though the decisions in Puja Roller Flour Mills (P) Ltd. and Behari Lal are from the Benches of equal strength, yet the decision in Behari Lal, having been rendered after considering the relevant provisions of law and relying upon the ratio from a decision of Larger Bench (Padma Srinivasan-supra), ought to prevail in case of any conflict. Learned counsel also referred to the decision of the Hon'ble Supreme Court in Haryana Financial Corporation & anr. Vs. M/s. Jagdamba Oil Mills and anr.: 2002 WLC (SC) Civil 210 and submitted that the decision of the Hon'ble Supreme Court in any given case cannot be read as a statute and the decision in Puja Roller Flour Mills (P) Ltd. (supra) cannot be read as a binding decision on the point that even after commencement of the new Act, any aspect of limited liability, particularly qua third party, as found earlier in Section 95 of the old Act could

be continued.

In relation to the quantum of compensation, learned counsel submitted that the award in question does not call for any reduction; that though non-pecuniary loss as allowed by the Tribunal appears to be excessive but in view of the young age of the deceased and his business activities, the assessment of pecuniary loss on relevant principles would stand higher than that allowed by the Tribunal; then, the claimant No.1 Smt. Shilpa has not been allowed adequate compensation for the loss suffered by her due to the injuries sustained in the accident; and in the ultimate analysis, the award of compensation cannot be said to be highly excessive or exorbitant.

Learned counsel for the insurer rejoined with the submissions that the award in question does not call for any reduction from the evidence on record it is established that the Jonga in question was carrying fare-paying passengers and, therefore, it is not correct to suggest that it were not a vehicle to whom clause (b) of sub-section (2) of Section 95 shall apply. Learned counsel submitted that insertion of proviso to sub-section (2) of Section 147 of the new Act makes it clear that the legislative intent was to provide for continuation of the coverage, even if for limited liability, for a period of four months after commencement of the new Act or till the date of

expiry of the existing policy whichever be the earlier. According to learned counsel for the insurer, if by virtue of Section 217 (2) (c) the existing insurance policy would become a document of unlimited liability under the Act of 1988, then the proviso to sub-section (2) of Section 147 would be rendered ineffective. Learned counsel replied to the contention regarding operation of sub-clause (i) of clause (b) of Section 95(2) of the Act of 1939 with the submissions that it obviously refers to the persons other than those who are occupying the said vehicle, in which the passengers are carried for hire or reward, and that would cover the persons like the occupants of Maruti car of the present case who were third parties qua the vehicle whose insurance coverage is in question.

Essentially, two broad questions emerge for determination in this appeal: (a) Whether liability of the insurer in the present case remains limited; and (b) Whether compensation has been allowed much in excess of just and reasonable one and the award deserves modification?

In view of the submissions made by learned counsel for the parties, the first question has three facets:

(1) Whether the policy in question has been that of limited liability per clause (b) of sub-section (2) of Section 95 of the Act of 1939; or it would be covered by clause (c) of sub-

section (2) of Section 95?

(2) Whether after commencement of the Act of 1988, so far limits of liability are concerned, the field has been taken over by Section 147 of the new Act read with clause (c) of sub-section (2) of its Section 217; or whether upto the period contemplated by the proviso to sub-section (2) of Section 147, i.e., four months after the commencement of the new Act or till the date of expiry of policy whichever is earlier, the coverage under the policy of insurance continued to be that of limited liability; and for the present case, where the accident occurred on 24.07.1989, the liability of the insurer would be limited to Rs.50,000/- by virtue of sub-clause (i) of clause (b) of sub-section (2) of Section 95 of the Act of 1939?

(3) Whether sub-clause (i) of clause (b) of sub-section (2) of Sec. 95 of the Act of 1939 limits the liability only in relation to the occupants of the vehicle other than the passengers carried for hire and reward; and has no co-relation with third parties like occupants of Maruti car in the present case.

Embarking upon scrutiny of the submissions made by learned counsel for the parties in this case, it shall be apposite to refer to the relevant provisions of law having a direct bearing on the issues involved. On the requirements of insurance policies and limits of liabilities, sub-section (1) of Section 95 of the Motor Vehicles Act, 1939 provided as to

how a valid insurance policy could be issued, to whom, and for what purpose; and provided for the person or classes of persons who were to be insured under such policy to the extent specified in sub-section (2). Proviso to sub-section (1) relaxed as to what the policy would not be required to cover. Sub-section (2) that related to the aspect of the limits of liability at the relevant time read as under:-

> **"95. Requirements of policies and limits of liability.**
> (1) xxx
> (2) Subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident upto the following limits, namely :-
>
> (a) where the vehicle is a goods vehicle, a limit of one lakh and fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's compensation Act, 1923, in respect of the death of, or bodily injury to, employees (other than the driver), not exceeding six in number, being carried in the vehicle;
>
> (b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment,-
>
> (i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;
>
> (ii) in respect of passengers, a limit of fifteen thousand rupees for each individual passenger;
>
> (c) save as provided in clause (d), where the vehicle is a vehicle of any other class, the amount of liability incurred;
>
> (d) irrespective of the class of the vehicle, a limit of rupees six thousand in all in respect of damage to any property of a third party.''

With the Act of 1988 coming into force on 01.07.1989, the corresponding law regarding requirements of policies and limits of liabilities has undergone a substantial change. Again, sub-section (1) of Section 147 of the new Act provides about the authority of person to issue insurance policy, about the person or classes of persons for whose coverage it is to be issued to the extent specified in sub-section (2), and about the same relaxation by way of proviso that what a policy is not required to cover. However, in sub-section (2) of Section 147 of the new Act, while providing for limits of liability, the legislature has made a departure from the scheme of sub-section (2) of Section 95 of the old Act; and has provided for coverage to the extent of liability incurred particularly in relation to bodily injuries of third parties; but sub-section (2) of Section 147 of the new Act carries a proviso that an existing policy of insurance issued with limited liability shall continue to be effective for four months after commencement of the new Act or till the date of expiry of such policy, whichever be the earlier. The said sub-section (2) of Section 147 of the new Act with its proviso read as under:-

> **"147. Requirements of policies and limits of liability.-**
> (1) xxx
> (2) Subject to the proviso to sub-section

(1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:-

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier."

Section 217 of the Act of 1988 deals with repeal and savings whereby Motor Vehicles Act, 1939 and any law corresponding to that Act in force in any State at the time of commencement of the Act have been repealed but under sub-section (2) provisions have been made notwithstanding such repeal; and it has been provided in clause (c) of sub-section (2) that any document referring to any of the repeal enactments or the provisions thereof, shall be construed as referring to this (new) Act or the corresponding provisions. Sub-section (2) (c) of Section 217 reads thus:

"**217. Repeal and savings.-**

(2)(c) any document referring to any of the repealed enactments or the provisions thereof, shall be construed as referring to this Act or to the corresponding provision of this Act;"

Taking up the first part of principal question arising in this matter, it is to be examined if the policy in question has been that of limited liability with reference to sub-clause (i) of clause (b) of sub-section (2) of Section 95 or it would be covered by clause (c) of sub-section (2) of Section 95? It is at once obvious that in order to address to this question, it is the class of vehicle that is relevant; of course, along with the insurance coverage as undertaken in the present case. As noticed, under Section 95 (2) of the old Act, a policy of insurance was required to cover statutory liabilities that were classified in respect of death or bodily injuries for three different classes of vehicles. Clause (a) dealt with the matter where the vehicle was a goods vehicle; clause (b) related to a vehicle in which passengers were carried whether for hire or reward or because of a contract of employment; and clause (c) was the residuary clause dealing with all other classes of vehicles, of course, subject to the provisions of clause (d) dealing with limits of liability on damage to any property of third party with which we are not concerned in the present case. While thrust of the submissions of learned counsel for the insurer has been that because the Jonga jeep in question was a vehicle in which passengers were carried for hire or reward, the liability of the insurer in respect of any person other than the passengers would be limited upto Rs.50,000/-;

on the other hand, learned counsel for the owner of the vehicle emphasized that it were a vehicle of 'any other class' as contemplated by clause (c) of Section 95(2) and, therefore, coverage would be upto the extent of liability incurred.

So far the vehicle in question bearing registration No. RJC 5129 is concerned, its description is available in the registration certificate Ex.36 that shows its class as LMV i.e. Light Motor Vehicle; maker's name as Willy's; type of body as D/van; its year of the manufacture 1957; seating capacity six in all; and engine capacity 32 HP. In relation to this vehicle, so far insurance coverage is concerned what has been produced on record is only the cover note Ex.37 and not the insurance policy. The cover note shows the vehicle to be having licenced carrying capacity for six in all; and so far coverage is concerned, though three different items are printed as: 'Comprehensive', 'Third Party', and 'Act Liability' and there appears one imprecise tick mark but nothing has been struck off as required that ‘Strike off which are not applicable’. The effective date of commencement is stated as 08.05.1989 and the date of expiry of insurance is stated as 07.05.1990. So far limitation on its use is concerned, in clause (7) of the said cover note, it has been given out as 'Private use only'. Premium computation shows that Rs.180/- has been charged and paid with reference to T.P. coverage.

Reading the registration certificate and the cover note together, the question naturally arises as to which clause of sub-section (2) of Section 95, the insurance coverage is referable to? It has not been the case of the insurer that the vehicle in question answers to the description of the vehicle contemplated by clause (a) but the submission has been that the passengers were being carried in the vehicle in question and, therefore, clause (b) shall apply. Though in this case, no evidence has been led on behalf of the insurer but the fact that fare-paying passengers were being carried in the vehicle in question appears in the very statements of the claimants' witnesses. On a comprehensive consideration of the testimony of AW-2 Bhikhe Khan, AW-3 Gemar Singh and AW-4 Subhan Khan it is but apparent that the vehicle was being plied between Balotra and Nakoda, transporting the passengers by charging fare, as Subhan Khan stated having paid fare of Rs.3/- and Gemar Singh also stated having made payment of fare of Rs.3/- to the driver Sabir Khan. However, the question is whether for such use of the vehicle as given out by the said passengers of the vehicle at the time of accident, the insurance coverage would be directly referable to clause (b) of sub-section (2) of Section 95?

It is noticed from the provisions of Section 95 (2) of the Act of 1939 that it is not the use of vehicle at the time of

accident that has bearing on the question of insurance coverage but it is the class of vehicle i.e., the purpose for which the vehicle is meant, that is relevant. In the present case, it is noticed that the appellant insurer has consciously issued the cover note with stipulation in clause (7) thereof on limitation to use as 'private use only'. The vehicle, even if it be considered to be a delivery van, was not meant for carriage of passengers for hire or reward or for any reason of contract of employment and it was meant for private use and for that purpose insurance coverage was obtained and was undertaken by the appellant. The appellant-insurer has chosen not to lead any evidence and not to produce insurance policy on record and from the material that is available, it is difficult to countenance the submissions of learned counsel for the appellant that the coverage could be referable to clause (b). On the contrary, for the cover note stating it to be for the vehicle meant for private use, the coverage would directly be referable to clause (c) only.

It may be pointed out that with reference to the statements of AW-2 Bhikhe Khan, AW-3 Gemar Singh and AW-4 Subhan Khan, it could have been the case of the appellant-insurer that there was violation of policy conditions inasmuch as the vehicle was being used for carriage of passengers for hire or reward though it was meant for private

use only; but neither such case has been set up before the Tribunal nor any evidence has been led in that regard that it were a case of willful, deliberate and conscious violation of policy conditions by the insured; nor any such case has been set up even in this appeal.

It is also required to be noticed in the present case that the cover note stated three different coverage viz., 'Comprehensive', 'Third Party' and 'Act only'. The tick mark available on the cover note is not distinct and specific and if abbreviation T.P. in respect of the premium computation of Rs.180/- is taken into consideration, then it was a matter of third party coverage and not merely of 'Act liability'. The Insurance Company having chosen not to lead evidence and not to produce relevant documents, an adverse inference is required to be drawn against it and construction of documents available on record cannot be made in its favour particularly when cover note does not specifically make out that it were a case of ‘Act only’ liability. In the aforesaid view of the matter, on the whole, this Court is unable to countenance the submissions of the appellant that it were a case of limited liability as contemplated by clause (b) of sub-section (2) of Section 95 upto Rs.50,000/- only; and this Court is of opinion that the appellant has failed to substantiate its case of limited liability.

In view of the material available on record, this Court is of opinion that the insurance coverage in this case is referable to clause (c) of sub-section (2) of Section 95 of the Act of 1939. Once this is held that coverage is referable to Section 95(2) (c), the ratio of the decision of the Hon'ble Supreme Court in Jameskutty Jacob (supra) directly applies that ,-

> "In view of the fact that it has not been shown to us that the vehicle was a taxi, the case would be covered by Section 95(2)(c) and the liability of the insurance company would be the amount of liability incurred, even though it is an 'Act only' policy."

In this view of the matter, issue No.4 deserves to be decided against the appellant. Though the Tribunal has proceeded to decide the said issue in a cursory manner but in the ultimate analysis, this Court is of opinion that the result remains the same and the liability of the appellant remains to the extent incurred.

With finding that clause (c) of sub-section (2) of Section 95 of the Act of 1939 covers the case, other two points on the question of the extent of liability of the insurer become irrelevant; but in view of the submissions made before this Court it appears apposite to dilate upon the second limb of the question, about the effect of proviso to Section 147 (2) of the Act of 1988.

It has been argued on behalf of the insured that after the commencement of the Act of 1988 so far limits of liability is concerned, the field would be governed by Section 147 of the Act of 1988 and immediately upon commencement of the Act, liability of the insurer would be that as contemplated by sub-section (2) of Section 147 of the Act of 1988 irrespective of limits of liability, if any, under the policy issued before commencement of the Act. Learned counsel for the insured in that regard has referred to a decision in Behari Lal's case (supra) wherein their Lordships of the Hon'ble Supreme Court have considered the scope and import of the proviso to Section 147 (2) of the Act of 1988; and while examining the scheme of the related provisions of the Act of 1988 and the principles governing the law relating to the interpretation of the contract of insurance, have referred to and applied the following dictum from a three-Judges' Bench decision of the Hon'ble Apex Court in the case of Padma Srinivasan (supra):-

> "Since the liability of the insurer to pay a claim under a motor accident policy arises on the occurrence of the accident and not until then, one must necessarily have regard to the state of law obtaining at the time of the accident for determining the extent of the insurer's liability under a statutory policy. In this behalf, the governing factor for determining the application of the appropriate law is not the date on which the policy of insurance came into force but the date on which the cause of action accrued for enforcing liability arising under the terms of the policy. That we consider to be a reasonable manner in which to understand and interpret the

> contract of insurance entered into by the insured and the insurer in this case."

In the said case of Behari Lal, the policy in question was issued on 28.10.1988, was valid upto 27.10.1989 and the accident occurred on 04.09.1989. An argument was raised before the Hon'ble Apex Court that proviso to sub-section (2) of Section 147 would govern the field and to that extent Section 217(2)(c) of the new Act cannot prevail and it was also urged that the (above mentioned) observations of the Hon'ble Supreme Court in Padma Srinivasan's case were intended to be nullified by the proviso to sub-section (2) of Section 147. The Hon'ble Apex Court rejected such contention and held,-

> "We are not persuaded to accept the contention of Mr. Jitendra Sharma that the proviso in question is incorporated to nullify the effect of that judgment. The proviso to sub-section (2) of section 147 cannot be read as a proviso to section 217(2)(c) of the new Act and it does not, in case of the existing policy being in force on the date of the occurrence of the accident, limit the liability of the insurance company to the amount mentioned in section 95(2) of the old Act.
>
> From the above discussion, it follows that the proviso to sub-section (2) of section 147 does not limit the liability of insurance companies to payment of compensation to the extent specified in the policy of insurance in terms of section 95(2) of the old Act which is in force before the commencement of the new Act for a period of four months after commencement of the new Act or till the date of expiry of such

> a policy, whichever is earlier. In this view of the matter, we endorse the view taken by the Division Bench of the High Court of Gujarat in Kacharabhai L. Limbachia v. Ratansinh J. Rathod-Patelia, 1998 ACJ 326 (Gujarat) and by the Division Bench of Punjab & Haryana High Court in National Insurance Co. Ltd. v. Puja Roller Flour Mills Pvt. Ltd., 1997 ACJ 698 (P&H)."

In view of the said considered decision of the Hon'ble Supreme Court, it would not have been a matter of any further argument that after commencement of the Act of 1988, even if the policy in question was of limited coverage under the Act of 1939, it had to be read as a policy of unlimited coverage for third parties as contemplated by Section 147 of the Act; but in view of the later decision of the Hon'ble Supreme Court in Puja Roller Flour Mills (P) Ltd. (supra), learned counsel for the appellant has emphasised that the latest view of the Hon'ble Supreme Court is that according to the proviso, the policy issued under the old Act shall continue to be effective. The said decision of the Hon'ble Supreme Court in Puja Roller Flour Mills (P) Ltd. reads thus:

> "1. Heard learned counsel for the parties.
>
> 2. The Motor Accidents Claims Tribunal (for short 'the Tribunal') by its award dated 15.9.1994 fixed the compensation at Rs.6,72,000/- and directed that as according to the terms of the insurance policy the liability of the Insurance Company was limited to the

extent of Rs.1,50,000/-, the claimants shall be entitled to recover a sum of Rs.1,50,000/- only from the Insurance Company and the balance amount of Rs.5,22,000/- from the owner of the vehicle. Against the said order, the owner of the vehicle filed an appeal before the High Court of Pujab and Haryana giving rise to First Appeal No.303 of 1995, in which the High Court upheld the quantum of compensation but directed that liability of the Insurance Company could not have been limited to Rs.1,50,000/- but the same was an unlimited one. Thereafter, the Insurance Company filed a letters patent appeal before the High Court which has been dismissed. Hence, this appeal by special leave.

3. Learned counsel appearing on behalf of the appellant submitted that according to the terms of the insurance policy the liability of the Insurance Company was to the extent of Rs.1,50,000/- in accordance with the Motor Vehicles Act, 1939 (hereinafter referred to as the old Act) but now, under the Motor Vehicles Act, 1988 (hereinafter referred to as the new Act) the liability of the Insurance Company is unlimited. It has been submitted that in cases where the insurance policy issued under the old Act was subsisting on the date of passing of the new Act, a special provision has been made under the proviso to Sec.147 (2) of the new Act which lays down that if any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, the same shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier. The new Act came into force on 1.7.1989 and the accident had taken place on 29.9.1989 on which date the policy was effective. As the accident has taken place within the period of four months and the policy was to expire thereafter, the date of accident being earlier one in point of time, according to the proviso, the policy under the old Act shall continue to be effective in the case in hand. Thus, in view of the proviso the liability of the appellant-Insurance Company

would be limited to a sum of Rs.1,50,000/- only.

4. Accordingly, the appeal is allowed, impugned orders passed by the Division Bench as well as the learned Single Judge of the High Court directing that liability of the Insurance Company shall be unlimited are set aside and order passed by the Tribunal limiting the liability of the Insurance Company to Rs.1,50,000/- is restored. It is needless to say that the Insurance Company shall be liable to recover the amount in excess of Rs.1,50,000/- paid by it to the claimants from the owner of the vehicle. No costs."

Though, ordinarily, in case of conflict of the views expressed by the two Benches of the Hon'ble Supreme Court of the same strength, it is the view expressed later that is to prevail but the exception arises when the first decision specifically considers a particular question and lays down the principles whereas the later decision without noticing earlier decision or principles laid down has been rendered as a mere conclusion. It was observed by the Hon'ble Karnataka High Court in D.V.Lakshmana Rao Vs. State of Karnataka and others: 2001 (4) Kar.L.J. 185 in this regard thus:

"This is so in view of another well-recognised principle relating to precedents, which is an exception to the normal rule that when there is divergence between decisions of two co-ordinate Benches of the Supreme Court, the latter decision should prevail. The exception arises where the first decision specifically considers a particular question and lays down the principles relating to the question; and the subsequent decision, without noticing the earlier decision or

> the principles laid down therein, and without examining the question, renders an assumptive decision. In such a situation, the earlier decision which considered the question and lays down the principle will apply."

It may be pointed that the Hon'ble Supreme Court while rendering the decision in Behari Lal's case (supra) specifically approved the view taken by a Division Bench of Punjab and Haryana High Court in the case of National Insurance Co. Ltd. Vs. Puja Roller Flour Mills Pvt. Ltd.: 1997 ACJ 698 (P&H) [= (1997-2) 116 P.L.R. 199]. From the statement of facts as available in the said Division Bench decision of Punjab and Haryana High Court, it is clear that the award made by the Tribunal on 15.09.1994 for compensation in the sum of Rs.6,72,000/- was the subject matter of appeal No.303/1995 before the Single Judge of the High Court; and ultimately the matter was decided by the Punjab and Haryana High Court in letters patent appeal on 25.02.1997. The very same decision of Punjab and Haryana High Court in letters patent appeal was the subject matter of appeal before the Hon’ble Supreme Court in the later decision in the case of National Insurance Company Vs. Puja Roller Flour Mills (P) Ltd., reported in MACD 2006 (2) (SC) 721, as relied upon by the learned counsel for the appellant. It appears that such a position that the Hon’ble Supreme Court in Behari Lal’s case

had already approved the view taken in the impugned Judgment by the Division Bench of Punjab and Haryana High Court was not brought to the notice of their Lordships of the Hon'ble Supreme Court while later decision was rendered in appeal.

Apart from the aforesaid, the principle of law that liability of insurer to pay compensation arises on the occurrence of accident and, therefore, necessarily regard must had to the state of law obtaining at the time of accident for determining the insurance liability, has been laid down by a three-Judges' Bench of the Hon'ble Supreme Court in Padma Srinivasan's case (supra), though it was rendered with reference to the provisions of Amendment Act of 1969 increasing the liability of the insurer under the Act of 1939. The Hon'ble Supreme Court has specifically rejected the contention in Behari Lal's case that proviso to sub-section (2) of Section 147 was enacted for the purpose of nullifying the effect of the decision in Padma Srinivasan's case. In the aforesaid view of the matter with the principle that for the purpose of extent of liability of the Insurance Company, the material date would be the date of accrual of cause of action when the liability arises, i.e. date of accident, as laid down in a decision by a larger Bench of the Hon'ble Supreme Court (in Padma Srinivasan's case), the submissions of the learned counsel for the insurer

cannot be countenanced. Hence, even if it were a case of coverage under clause (b) of sub-section (2) of Section 95, after commencement of the Act of 1988, liability of the insurer would be to the extent incurred.

Third part of the submissions on this question if sub-clause (i) of clause (b) of sub-section (2) of Section 95 of the old Act relates only to the passengers other than fare-paying passengers, as suggested by learned counsel for the insured, appears to be a submission far too stretched and rather incorrect. A comprehensive reading of clause (b) makes it clear that it deals with a vehicle in which passengers are carried for hire or reward or under a contract of employment; and coverage has been provided in sub-clause (i) in relation to persons other than the passengers and under sub-clause (ii) in respect of the passengers. The suggestion that sub-clause (i) should be restricted in its operation only qua the occupants inside the vehicle and other than the passengers carried for hire or reward would be leading to the result as if no coverage is provided for third parties; and does not sound convincing. Be that as it may, there appears no necessity to dilate further on this aspect as this Court is clearly of opinion that the first question is required to be decided against the insurer and its liability cannot be held limited for insurance coverage itself being not of limited liability and for the accident

having occurred after commencement of the Act of 1988.

So far quantum of compensation is concerned, it does appear that the Tribunal has not applied any of the relevant principles while quantifying the compensation and has made the award rather on emotions; and so also in an arbitrary fashion. Maintenance amount admissible to a person for his or her subsistence under Section 125 Cr.P.C. had hardly any bearing while quantifying the pecuniary loss in this vehicular accident case; and then allowing a sum of Rs.2,50,000/- towards non-pecuniary loss to the parents and wife of the deceased appears to be entirely unjustified. However, it is noticed in the present case that the deceased was about 22 years of age and was already engaged in a reasonable business. Even if substantial part of his earning was from interest and commission, loss of his labour into finance and management and of his business skills cannot be totally ignored. Even if it be assumed that the salary as suggested in the claim application from his father's shop was simply of the accounts of adjustment, the fact that he was possessed of sufficient capital and had already purchased a shop at Surat to start his own business cannot be lost sight of.

In the overall circumstances of the case, this Court is of opinion that even if earnings of the deceased be taken in the range of about Rs.2,000/- per month, it would lead to an

income of Rs.24,000/- per annum and after deduction of one-third on his personal expenditure, the multiplicand would stand at Rs.16,000/-; and with application of multiplier of 17, in view of his age at 22 years, pecuniary loss would stand at Rs.2,72,000/-. Therefore, pecuniary loss assessed by the Tribunal at Rs.2,58,000/-, though on incorrect and invalid premise, does not appear to be excessive. It is true that the amount of Rs.2,50,000/- awarded towards non-pecuniary loss allowing Rs.50,000/- each to the wife, father and mother and another Rs.1,00,000/- to the wife stand on higher side but then, the fact remains that the deceased expired within 12 days of his marriage at a young age of about 22 years. Therefore, a reasonable amount is definitely required to be allowed towards non-pecuniary loss to the claimants.

Another significant factor noticeable in this case is that the wife of deceased, claimant No.1 Smt.Shilpa, sustained multiple injuries in the same accident and the claimants proceeded to club the claim in relation to loss suffered by her due to the injuries so sustained in the same claim application as is apparent from the averments taken in paragraph 11 (b); and it has also been pointed out in the evidence that she was continuously under treatment having suffered physically and mentally. Having regard to the circumstances of the case, this Court is of opinion that looking to the nature of

claim application, a reasonable amount of compensation for the claimant Smt. Shilpa is required to be considered for the loss suffered by her due to the injuries sustained in accident and the sum of Rs.17,000/- as allowed by the Tribunal on that count appears to be rather on the lower side. Then, the components of transportation and funeral expenses are also required to be considered. Then, the fact remains that present one is an appeal by the insurer who has chosen not to lead any evidence at all. Yet further, the fact remains that this Court had already rejected the stay application way back on 07.05.1993 and thereafter the insurer deposited the entire amount with the Tribunal that was disbursed to the claimants, of course after taking solvent security.

In the cumulative effect of all the reasons aforesaid, this Court is of opinion that the quantum of compensation as awarded by the Tribunal does not deserve to be upset in this appeal at this stage.

As a result of the aforesaid, this appeal fails and is, therefore, dismissed. Parties are left to bear their own costs.

(DINESH MAHESHWARI),J.

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